



- b. **Exhibit B** – Agency Acknowledgement of the FOIA Request dated March 16, 2012;
- c. **Exhibit C** – A follow-up FOIA Request seeking the same records on behalf of Mr. Wetzel;
- d. **Exhibit D** – A letter from the Agency dated May 24, 2012, acknowledging receipt of Exhibit C, noting that it duplicates Exhibit A, and declining to take further action on Exhibit C;
- e. **Exhibit E** – Agency Letter from June 11, 2012 requesting a signed release from the Plaintiff, Mr. Wetzel, authorizing the Agency to release the records sought;
- f. **Exhibit F** – Authorization Form from Plaintiff, Mr. Wetzel, dated June 12, 2012;
- g. **Exhibit G** – Letter from Mr. Wetzel’s Counsel forwarding the Authorization form on June 12, 2012;
- h. **Exhibit H** – FOIA Appeal by Mr. Wetzel, filed on August 2, 2012, for the constructive denial of his FOIA request dated March 6, 2012;
- i. **Exhibit I** – Agency Denial of Mr. Wetzel’s FOIA Appeal.

### **JURISDICTION AND VENUE**

- 3. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).
- 4. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
- 5. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2412(d) and 5 U.S.C. § 552(a)(4)(E).

6. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), because the Defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

### **PARTIES**

7. Mr. Wetzel is a resident of the District of Columbia, currently working in Afghanistan. On April 16, 2010, Mr. Wetzel purchased a property located at 57 Bryant Street NW, Unit # 1, in Washington, D.C. At the time, Mr. Wetzel was located in Afghanistan and entered the transaction through his authorized representative Mr. Jonathan Paul Rushbrook.
8. The United States Department of Veterans Affairs, through the Veteran Benefits Administration (the “Agency”), funded Mr. Wetzel’s acquisition of the property with a government sponsored mortgage commonly referred to as a VA Loan. The FOIA Requests attached as Exhibits A and C seek certain documents filed on behalf of the property’s developer, which Mr. Wetzel reasonably believes demonstrate false claims by the developer to obtain proceeds from the agency. The Agency appears to be the only entity in possession of the documents Plaintiff seeks.

### **FACTUAL ALLEGATIONS**

9. On March 6, 2012, a FOIA request was filed on Mr. Wetzel’s behalf. *See* Exhibit A.
10. That request sought the following records:
  - a. the Attorney Opinion Letter submitted on or around February 25, 2010 by Jason Pardo, Esq. and/or the law firm of Pardo & Drazin, LLC regarding the condominium that secures the following VA mortgage:  
Veterans Affairs Case No: 72-72-6-0865620  
MIN: 1000748-0025610029-0  
Borrower: Adam Wetzel

Property Address: 57 Bryant St. NW #1, Washington, DC 20001  
Settlement Date: April 16, 2010;

- b. any additional documents submitted by Jason Pardo, Esq. and/or the law firm of Pardo & Drazin, LLC regarding the condominium that secures the above-referenced VA mortgage.
11. The purpose for the records was for use on Mr. Wetzel's behalf in litigation in the Superior Court of the District of Columbia, *Wetzel v. Capital City Real Estate*, Case Number: 2011 CA 006131 B.
12. On March 16, 2012, the Agency acknowledged receipt of the FOIA request. *See* Exhibit B.
13. The Agency did not provide a determination within 20 days of receiving the FOIA Request.
14. On April 30, 2012, a second FOIA Request was filed on Mr. Wetzel's behalf, seeking the same records sought in the first FOIA Request. *See* Exhibit C.
15. On May 24, 2012, the Agency acknowledged receipt of the second FOIA Request on Mr. Wetzel's behalf. *See* Exhibit D. That letter noted that Exhibit C was a duplicate of the FOIA Request demonstrated by Exhibit A. The Agency then stated that it would take no further action as to Exhibit C.
16. On June 11, 2012, Plaintiff's counsel received a letter from the Agency asking that Mr. Wetzel sign a release form authorizing the agency to release the records sought. *See* Exhibit E.
17. On June 12, 2012, Mr. Wetzel signed the authorization form. *See* Exhibit F.
18. That same day, Mr. Wetzel's counsel transmitted the release form to the Agency on Mr. Wetzel's behalf. *See* Exhibit G.

19. The Agency did not provide a determination of the FOIA request within 20 days of receiving the release form.
20. On August 2, 2012, Mr. Wetzel filed an agency-level appeal of the Agency's constructive denial of his FOIA request. *See* Exhibit H.
21. On August 8, 2012, the Agency denied the appeal. *See* Exhibit I. The denial of the appeal did not address the Agency's failure to issue a determination within 20 days of either the initial FOIA request or within 20 days of receiving Mr. Wetzel's authorization form.

**COUNT I – Freedom of Information Act**

22. Plaintiff re-incorporates the previous allegations as if fully set forth herein.
23. The Agency had an obligation to make a determination of the FOIA Request within 20 days from the date it was filed.
24. To date, the Agency has not reached a determination as required by the FOIA.
25. Nor has the Agency requested a reasonable extension of time in which to respond to the FOIA request.
26. Mr. Wetzel has actually and constructively exhausted his administrative remedies.
27. The Agency has no valid basis for continuing to withhold the records sought in the FOIA Request.

**PRAYER FOR RELIEF**

- A. Plaintiff seeks a declaration that the Department of Veterans Affairs has denied Plaintiff's FOIA Request;
- B. Plaintiff seeks a declaration that the denial of Plaintiff's FOIA Request was not correct as a matter of law under the OPEN Government Act of 2007;

- C. Plaintiff seeks a declaration that Plaintiff's FOIA claim is not insubstantial under the OPEN Government Act of 2007;
- D. Plaintiff seeks an order requiring the Department of Veterans of Affairs to produce the records sought in the FOIA Request attached as Exhibit A;
- E. Plaintiff seeks an order declaring that Plaintiff is entitled to a full fee waiver under 5 U.S.C. § 552 (a)(4)(A)(iii) for Plaintiff's FOIA request;
- F. Plaintiff seeks an award of attorney fees and costs under 5 U.S.C. § 552(a)(4)(E) as modified by the OPEN Government Act; and
- G. Plaintiff requests that this Court maintain jurisdiction over this action until the Agency complies with the FOIA and every Order of this Court.

Respectfully submitted,

/s/ Jimmy R. Howell Jr.

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